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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,327	01/22/2002	Mary L. Bussler	0981/1	2715

7590 11/18/2004
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EXAMINER

KAVANAUGH, JOHN T

ART UNIT PAPER NUMBER

3728

DATE MAILED: 11/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/051,327	Applicant(s) BUSSLER, MARY L.	
	Examiner Ted Kavanaugh	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: The title is too long.

Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.

Appropriate correction is required.

2. Claims 1-9 are objected to because of the following informalities: In Claim 1, "the **configuration** of said shoe sole" lacks proper antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. Claims 1-9 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the phrase, "the insole at the bottom of the insertion of the shoe" is unclear and indefinite. There is no "insole" previously claimed. It would appear applicant is referring to the "footbed". It is not clear what applicant is referring to by "at the bottom of the insertion of the shoe".

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In claim 1, "the metatarsal pad" is indefinite because the claims indicated the pad as an addition to the "footbed" which would not be accurate and therefore is indefinite.

Claims 2-4 are unclear and indefinite because applicant refers to a "plurality of cavities" at different locations on the underside of the footbed. However, there is only one cavity (35) in the heel portion and one cavity (36) between the first metatarsal and proximal phalange.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

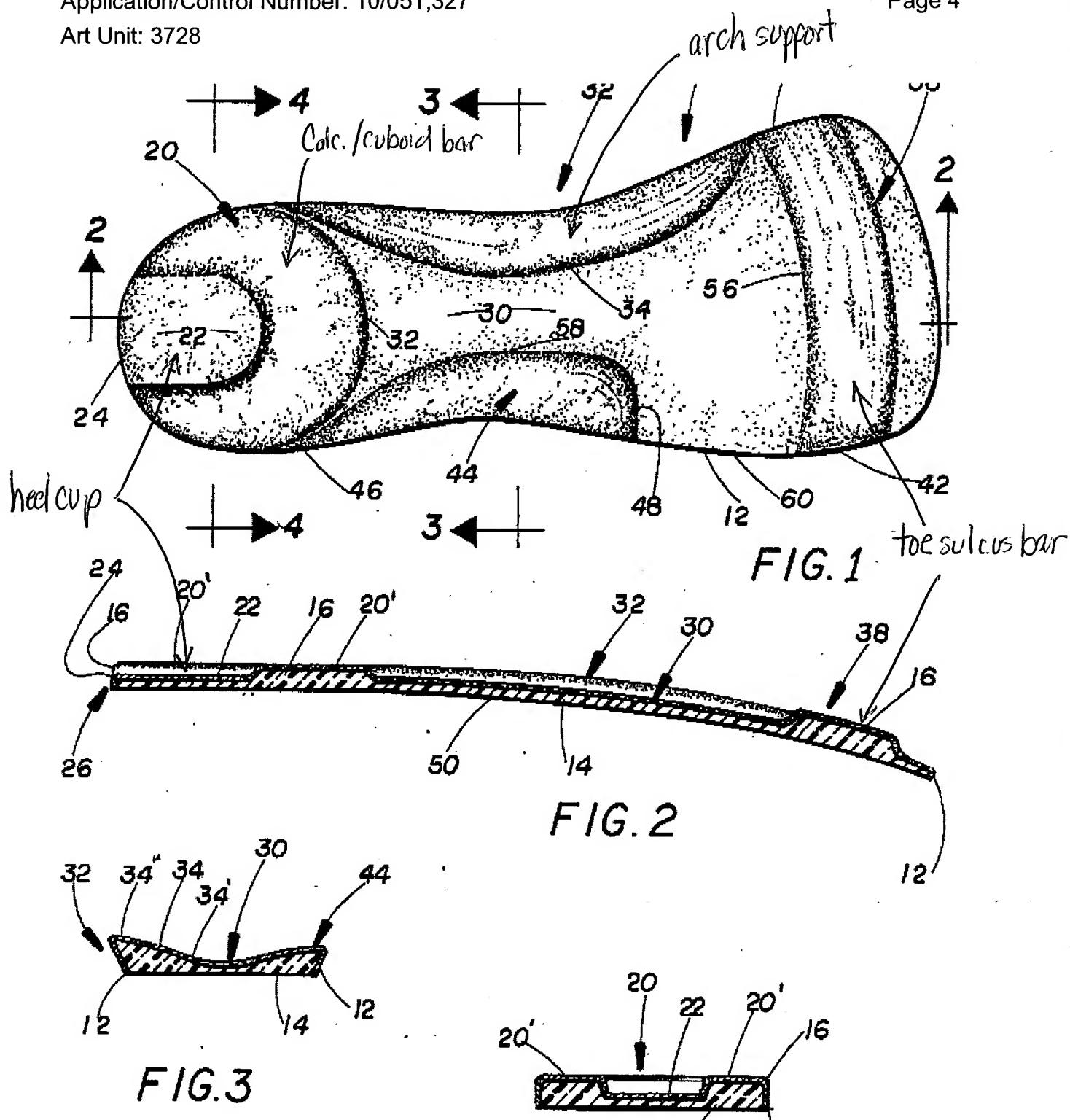
Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1 and 6-9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over US 4955148 (Padilla).

Padilla teaches the combination of a high-heeled shoe (see col. 1, lines 12-25) and a footbed (foot support assembly) as claimed, see the marked-up figures below. The foot support provides proper fitting within a give shoe style, see col. 2, lines 5+.



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Padilla doesn't show the high-heeled shoe (otherwise known as pump shoes) but it is well known in the art for them to have an upper, a toe box and a heel having a height of at least 1 inch, and some being more than 3 inches. To the extent that Padilla doesn't teach a high-heeled shoe as claimed, the examiner takes official notice that high-heeled shoes having a toe box and heels of such height are well known and conventional in the art. Therefore, it would have been obvious to provide the shoe of Padilla with a high-heeled shoe, to provide proper support and balance to high-heeled shoes.

7. Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Padilla as applied to claim 1 above, and further in view of either US 5675914 (Cintron) and/or US 2408792 (Margolin).

Both Cintron and Margolin teaches shoe supports having cavities/grooves on the underside to provide proper ventilation to the shoe. It would have been obvious to provide the support as taught above with cavities/grooves on the underside, as taught by either Cintron and/or Margolin, to provide proper ventilation.

Conclusion

8. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including:

-“The reply must present arguments pointing out the *specific* distinctions believed to render the claims, including any newly presented claims, patentable over any applied references.”

--“A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.”

-Moreover, “The prompt development of a clear issue requires that the replies of the applicant meet the objections to and rejections of the claims.

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Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06" MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at www.uspto.gov.

Telephone inquiries regarding other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners" M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (703) 872-9306 **(FORMAL FAXES ONLY)**. Please identify Examiner Ted Kavanaugh of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Ted Kavanaugh whose telephone number is (703) 308-1244. The examiner can normally be reached from 6AM - 4PM. Starting November 8th, 2004 the examiner's telephone number will change to (571) 272-4556.

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A handwritten signature in black ink, appearing to read "Ted Kavanaugh".

Ted Kavanaugh
Primary Examiner
Art Unit 3728

TK

November 17, 2004